KI (USA) Corporation *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Petitioner. Case 9–RC–15842

December 16, 1992

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The National Labor Relations Board has considered objections to an election held March 22, 1991, and the attached hearing officer's report (pertinent portions are attached) recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 19 for, and 16 against, the Petitioner.

The Board has reviewed the record in light of the exceptions[1] and briefs and adopts the hearing officer's findings and recommendations, and finds that a certification of representative should be issued.

We adopt the hearing officer's recommendation that Employer's Objection 3 be overruled. The issue in this case is whether the petitioning Union interfered with the election by, on the eve of the election, circulating a copy of a letter published by a Japanese businessman that made assertions that concededly contain elements of prejudice and bias against American workers. Consistent with the rationale expressed by the hearing officer, we find that the Union's circulation of this letter does not constitute the kind of gratuitous campaign appeal to prejudice proscribed in *Sewell Mfg. Co.*, 138 NLRB 66 (1962).

The Employer in this proceeding is a subsidiary of a Japanese corporation which adheres to certain management programs originating in Japan, and in fact provides training for its local managers in that country. The Employer employs both Japanese nationals and Americans in its management ranks, with Japanese nationals predominating in the higher ranks of management. At the Berea, Kentucky manufacturing facility, which is the site of the present election proceeding, on-site management is composed mainly of Americans. Their assigned management role is to use a blend of American and Japanese management concepts. This has resulted in a setting in which, prior to the initiation of the Union's organizational campaign, employees expressed concerns as to the extent to which the Employer's Japanese owners and managers appreciated the American employees and the American managers. Although employees expressed among themselves such thoughts during the election campaign, there is no evidence that the Union contributed to these remarks. Further, there is no contention that the employees' statements are themselves a separate basis for setting aside the election.[2]

The day prior to the election, the Union held a meeting attended by four employees and two union representatives. At the end of the meeting one of the union representatives made available to the employees various printed material, including the letter in question. In its entirety, the Union's distribution stated:

> You Should Know
>
> Voice From Japan
>
> In regard to your article ''Bubba's 5th Annual Honda Drop'' in the October issue, if you want to destroy Japanese products, you should start with your Harley-Davidson motorcycles. I recently toured a Harley-Davidson dealership and was given the opportunity to examine the 1991 models and the ''genuine'' parts. I saw more made-in-Japan, -Korea, and -Taiwan labels than you could even find in a Japanese company. Perhaps that is why Harley-Davidsons are finally being praised as quality products—because of the excellent Japanese parts on them.
>
> As a Japanese businessman and investor, I am appalled at the typical lazy, uneducated American worker I have had to deal with in your country. The Japanese work force and management philosophy is proven superior, and your half-witted American managers are constantly studying our techniques. In America it is your political leaders who are doing you the most harm, not the Japanese. The fact that Americans believe in such false patriotism and political lies shows how ignorant and weak you have become.
>
> I suggest the Americans start developing a healthy respect for Japan because one of my colleagues will eventually become your boss and/or own your company. In Japan we have a very rich tradition and long history of patience, but we will not show patience with your disrespect and racism towards our proud and growing empire.
>
> Toshito Nakamura
>
> Osaka, Japan

[1] The Employer has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] Regarding the hearing officer's comments on remarks about the Japanese occurring in discussions solely between unit employees, we agree with his finding that such remarks were not frequent or extensive and that some of them predated the Unions's petition. We also agree with his conclusion that they are not grounds for setting aside the election, even assuming arguendo that the *Sewell Mfg.* line of cases extends to third party conduct standing alone. We therefore find it unnecessary to pass on what the hearing officer finds ''indicated'' in the latter regard by *Brightview Care Center*, 292 NLRB 352 (1989).

The content of the letter clearly indicated that it was written in response to an article in a monthly publication.[3] The Union's sole addition to the letter was adding the ''You Should Know'' banner, and underlining some of the text of the letter. The Union did not refer to the letter in its campaign, and the record does not expressly reveal the Union's intent in distributing this material. It does show, however, that the letter was reproduced and widely disseminated among the unit employees during the remaining time before the election the next day.

It is undisputed that the Employer had no connection with the writer of the letter, nor is there any contention that the Employer in any way expressly endorsed or made statements paralleling the thrust of the letter.

In *Sewell Mfg. Co.*, supra, the Board held that it would set aside elections when a party engages in a campaign which seeks to overstress and exacerbate racial feeling by irrelevant, inflammatory appeals. 138 NLRB at 72. The Board in *Sewell* distinguished such conduct from isolated, casual, prejudicial remarks, and also stated that it did not seek to condemn relevant campaign statements merely because they may have racial overtones.

In rendering a judgment on this alleged objectionable conduct, the most formidable task we face is assessing the intent of the Union in distributing this letter—in the words of *Sewell*, what the party ''seeks''—as well as trying to gauge its likely effect on the unit employees in question.[4] In particular, we note that the Union never provided any commentary to employees on how this letter, written by a ''Japanese businessman and investor,'' related to the Employer's attitudes towards its employees.[5] Accordingly, as noted, the exact intent of the Union in distributing this material is unclear. However, the context was that the employees were concerned about the impact of the attitudes of the Japanese owners on their workplace. Thus, a depiction of one such example by another Japanese businessman appears to be an attempt at least to pose the question of whether there is some connection between the two. It does not automatically follow, however, that this communication is inherently objectionable. Although such claims raise the specter that some voters may overreact and respond in an equally prejudicial manner, and that awareness of this potential may fairly be imputed to those who would raise such issues, the Board has not equated the broaching of such topics to opening a Pandora's box. The Board has held, with court approval, that even specific claims that the other party to the election, or one of its agents, is biased in terms of race or national origin may be a permissible topic during an election campaign. See, e.g., *Coca-Cola Bottling Co.*, 232 NLRB 717 (1977); *State Bank of India v. NLRB*, 808 F.2d 526, 541–542 (7th Cir. 1986); and *Peerless of America v. NLRB*, 575 F.2d 119, 125 (7th Cir. 1978). We note in particular, the court's statement in *State Bank of India*, that the union's claim that the employer was taking advantage of employees because of their national origin or minority group status was not an appeal to racial prejudice, but was merely urging the employees to vote for the union to prevent discrimination. Similarly, in *Beatrice Grocery Products*, 287 NLRB 302 (1987), the Board found that it was not objectionable for the union representative to make a statement representing that the employer's general manager had derisively referred to employees with a racial pejorative, even where the record did not resolve whether the particular comment had been expressed. The Board found that the statement represented an effort to denounce perceived racial prejudice in the other party to the election, rather than to incite correlative prejudice against a particular racial or religious group. Id. at 303. The Board, however, definitively set out the limits to be observed in broaching such sensitive campaign topics:

> We do not condone the use of racial or ethnic epithets such as that at issue here. Had a union representative used such a term in comments attacking a particular racial, ethnic, or religious group, or made racial, ethnic, or religious references as part of an inflammatory campaign theme, or had the representative brought up references to racial, ethnic, or religious groups in a totally gratuitous way, unconnected to any employee concerns, we would not hesitate to set aside the election. Under the circumstances here, however, we cannot conclude that this single incident ''so lowered'' proper election standards ''that the uninhibited desires of the employees could not be determined in the election.'' *Sewell Mfg. Co.*, supra, 138 NLRB at 72.

Id. at 303. In setting these limits, the Board has acted consistently with its own precedent in which it had set aside an election where a union made racially and nationally pejorative statements directed toward Japanese owned and operated facilities in this country. See *YKK (U.S.A.) Inc.*, 269 NLRB 82 (1984). That case is clearly distinguishable from the instant one in that, there, the union made a series of intemperate racial statements which had no direct bearing on campaign issues, and served only to exacerbate feelings of hostility on

[3] The letter in fact appeared as a letter to the editor in the January 1991 issue of *Easy Rider* magazine, which the hearing officer found was a publication directed to Harley-Davidson owners and operators.

[4] Our colleague misconstrues *Sewell* in contending that a party's intent in this regard is an irrelevant factor.

[5] We do not infer, as does our dissenting colleague, that the absence of such clarification makes the letter ''untruthful.''

issues which were not germane to proper workplace issues.[6]

Although we may question whether the Union's distribution of this letter was a meaningful contribution to its organizing campaign, our task in this case is solely to determine whether this conduct so clouded the election atmosphere as to require the election to be set aside. Applying the limits set forth above in *Beatrice*, we find that the Union at no time interjected racial, ethnic, or religious epithets against any group. Further, the distribution of the letter fell far short of injecting an inflammatory campaign theme. Clearly, the employees' expressed apprehensions regarding how they were perceived by the Employer predated the organizing campaign. There is no dispute that the republication of the letter was truthful, to the extent that the Union did not alter the text of the letter from that contained in the original, and the Union made no direct claim that these sentiments were necessarily shared by the Employer. Finally, we observe that the ethnic references were directly keyed to perceived workplace attitudes. Notwithstanding any racial overtones, the topic of how American workers were regarded by management was a relevant campaign issue, not a gratuitous comment.

In sum, we find no clear evidence that the Union intended to generate a general racially based hostility against Japanese nationals; and, in our view, the employees remained able to judge for themselves whether the statements in the Nakamura letter might resemble views of American workers held by the Employer and, if so, how they should view their Employer. Accordingly, although we sympathize with our dissenting colleague's desire to eradicate all offensive publications or statements in elections, we do not agree that the publication of the letter under the circumstances here amounted to the kind of inflammatory appeal condemned by *Sewell Mfg*.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and that it is the exclusive collective-bargaining representative of the employees in the following unit:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its 501 Mayde Road, Berea, Kentucky location, including shipping and receiving and quality assurance employees, but excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

[6] We also find this case distinguishable from *M & M Supermarkets v. NLRB*, 818 F.2d 1567 (1987), in which the court denied enforcement of a Board order on the basis that statements made during the election campaign, although not attributable to the union, were so inflammatory and derogatory that they inflamed racial and religious tensions against the owners of the employer and were thus objectionable.

MEMBER RAUDABAUGH, dissenting.

In brief, the evidence establishes that the Employer is a Japanese-owned company. Unit employees believed that Japanese employers held negative attitudes regarding American workers. They were concerned that their Employer shared these views. The Petitioner sought to appeal to these beliefs and concerns by distributing copies of an article written by a Japanese businessman, Toshita Nakamura. In that article, Nakamura said that American workers are lazy and uneducated. He also said that Americans are ignorant and weak.

There is no evidence that Nakamura has any relationship to the Employer. Nor is there any evidence that the Employer shares Nakamura's views.

I begin with the proposition that Nakamura's views are deeply offensive. He lumps all American workers together, and proceeds to describe them in strident negative terms. Such negative stereotyping is patently obnoxious.

However, the Petitioner's responsive conduct was also offensive, ironically for the very same reasons. The Petitioner, by distributing the handbill to the employees, sought to capitalize on their concern that all Japanese, including the Employer, held negative views of the American worker. Thus, the Petitioner sought to lump the Employer together with Nakamura, on the sole basis that they were both Japanese, and to ascribe to the Employer the pejorative views of Nakamura. In sum, the Petitioner sought to create the impression that all Japanese held prejudiced views of the American worker. This negative stereotyping of Japanese is as offensive as Nakamura's negative stereotyping of American workers. Neither has a legitimate place in a representation election conducted by this Board.[1]

As *Sewell* makes plain, the parties have an obligation to refrain from exacerbating ethnic tensions.[2] In addition, a party must limit itself ''to *truthfully* setting forth another party's position on matters of racial interest.'' (Emphasis in original.)[3] In the instant case, the employees were concerned that their Employer held anti-American views. The Union's distribution of the letter could only exacerbate that ethnic tension. In addition, since there is no record evidence that the Employer in fact held anti-American views, the Union was not truthfully setting forth the Employer's position on these matters.

[1] *Sewell Mfg. Co.*, 138 NLRB 66 (1962).
[2] Id. at 71–72.
[3] Id. at 71.

My colleagues assert that ''the record does not expressly reveal the Union's intent in distributing this material'' and that ''the exact intent of the Union'' is unclear. My colleagues therefore conclude that ''we find no clear evidence that the Union intended to generate a general racially based hostility against Japanese nationals.''

My colleagues have erred by making intention a key factor. In general, intention or motive is not a necessary element in an objections case. The issue is whether the election was conducted ''in an atmosphere conducive to the sober and informed exercise of the franchise.''[4] ''Where *for any reason* the standard falls too low the Board will set aside the election and direct a new one.''[5]

Further, even if proof of intention were required, it need not be shown with the exactitude and clarity required by my colleagues. Even in an 8(a)(3) case, where proof of motive is required, a simple preponderance of the evidence will suffice. Certainly, in an objections case, a higher standard should not be required. Indeed, in objections cases like the instant one, the critical burden is not on the objecting party. The burden is on the other party, i.e., the one who distributes the ethnic message. The specific burden is to establish that the message was truthful and germane.

Applying these standards to the instant case, the Union's untruthful and exacerbating message upset the laboratory conditions. Further, even if intention were relevant, the evidence indicates that the Union wished to create the impression, in the minds of the employees, that the Employer, being Japanese, shared Nakamura's biases. At the very least, it was reasonably foreseeable that unit employees would view the literature in that light.

My colleagues also seek to analogize this case to one in which one party to an election directly accuses the other party of racial or ethnic bias. As set forth above, the Union did more than that. The objectionable conduct was the suggestion that the Employer, *simply by being Japanese*, necessarily subscribed to the biased views of another Japanese person. In addition, as discussed above, there is no record evidence that the Union was not ''*truthfully* setting forth [the Employer's] position on matters of racial interest.''[6]

[4] Id. at 70.

[5] Id. at 72.

[6] Contrary to the suggestion of my colleagues, I do not seek to ''eradicate all offensive publications or statements in elections.'' I simply believe that the statements in this case clearly crossed the line demarked by *Sewell.*

APPENDIX

Hearing Officer's Report

The Employer's Operation:

The Employer, a wholly owned subsidiary of a Japanese corporation, is engaged, at Berea, Kentucky, in the production of component parts for the automobile industry. The Employer's management staff is comprised of both Japanese nationals and Americans. It appears that the upper echelon positions in the Employer's management are held primarily by Japanese nationals, whereas the on-site management is comprised primarily of Americans.

In the operation of its Berea, Kentucky plant, the Employer has utilized certain manufacturing equipment and techniques developed in Japan. In conjunction therewith, the Employer has caused a number of individuals to travel from Japan to the Employer's Berea, Kentucky facility to share their technical expertise in such production methods. The Employer has also made arrangements for certain Americans to travel to Japan for training purposes. Additionally, in the operation of its Berea, Kentucky facility, the Employer has implemented a synthesis of Japanese and American management concepts.

As the apparent result of the Japanese involvement in the operation of the Employer's Berea plant, employees, from time-to-time, have questioned whether the American managers have effective control of the Employer's plant and, in their informal discussions, questioned whether the Japanese people appreciate American workers and, in particular, black American workers.

Employer's Objection 3:

The Employer's Objection 3 alleges, in substance, that the Petitioner improperly and unlawfully engaged in a pattern of appeals to racial and national origin prejudice and issued false statements regarding the Employer's position on such matters, inflaming the racial and national origin feelings of the employees.

Findings of Fact and Conclusions:

During their orientation the Employer's employees were informed that the Employer was an international corporation that would seek to utilize the best of Japanese concepts and American concepts, discarding the rest. In fact, one position at the Employer's facility is denominated Kaizen supervisor. The position is responsible for promoting the Kaizen program of production improvement through labor-management teamwork which originated in Japan and was further developed in the United States. The interchange of Japanese and American techniques and concepts was further enhanced by Japanese employees brought to the Berea, Kentucky facility to lend their technical expertise and by programs to train American managers in Japan. As an apparent result of the Japanese influence, certain employees were heard to complain that the American managers had essentially a minor role and that the plant was run by the Japanese.

The virtually undisputed facts in this matter establish that well before the advent of the Union's organizing campaign, at least some employees were concerned that the Japanese members of the Employer's management staff might not respect or fully appreciate the Employer's American employees. Thus, one of the Employer's black employees, Theodore Jackson Jr., testified that approximately 1 year earlier, as the result of a newspaper article that another employee had brought to him, he and the employee had had some discussion about alleged Japanese failure to appreciate the black

American workers. That matter remained a ''private joke'' between the two employees even at the time of the union campaign.

During the course of the campaign, various employee union supporters commented, in the presence of other employees, concerning negative opinions of American workers allegedly held by Japanese. Thus, one such employee, union advocate Paul Reed, was heard to comment on several occaions to the effect that the Japanese had a low opinion of American intelligence and workmanship and that the Company would be better when the Japanese left so that the Company would be run more like an American company. Another such prounion employee, Jerry Ferrell, was heard to comment that the Japanese had money to pay the employees, but were ''screwing us over,'' that the Japanese were making a profit. A general discussion of alleged Japanese belief that American workers, particularly black workers, were lazy, occurred at one of the Petitioner's campaign meetings, conducted by the Petitioner's International representative, William Young. However, there is no record evidence of what, if anything, Young contributed to that discussion.

On the day preceding the March 22 election, the Petitioner conducted a meeting attended by four employees and two of the Petitioner's representatives, including William Young. At the conclusion of the meeting, Young made available to the employees various pieces of literature which he advised them to consider. Included was a copy of a letter to the editor of the January 1991 Easy Rider Magazine, a publication directed to Harley-Davidson Motorcycle owners and operators. The letter to the editor was written by a purported Japanese investor. The Petitioner had added the caption ''*YOU SHOULD KNOW*'' and reproduced the document for use in its campaign. (A copy of the document (the Nakamara letter) is attached hereto as Appendix A (omitted from publication).) The document, as distributed by the Petitioner, had emphasis added as shown by the underscoring thereon. That document was reproduced and widely circulated among employees at the Employer's facility on the evening before the date of the election as well as on the day shift commencing at approximately 7 a.m., the day of the election. The import of the Nakamara letter was openly debated by employees and several employees commented, essentially questioning whether that the document showed what the Japanese thought of them or thought of the American worker.

When the subject document came to the attention of the Employer's management, particularly the Employer's manager of human resources, Harry David Billups, the Employer commenced an investigation into the matter and was shortly advised that the document was a copy of a letter to the editor of Easy Rider Magazine. The Employer was further advised that in a subsequent issue of the same publication, another letter to the editor by another Japanese businessman, had admonished the author of the subject document. The Employer obtained a copy of the rebuttal letter to the editor. (A copy of said letter (the Tsakikoto letter) is attached hereto as Appendix B (omitted from publication).) The Employer then prepared a cover letter for distribution with the Tsakikoto letter. (A copy of the Employer's cover letter is attched hereto as Appendix C (omitted from publication).)

By 12:30 p.m. on the day of the election, the Employer had prepared four or five copies of the rebuttal document, the Tsakikoto letter (Appendix B) with the Employer's cover letter (Appendix C) attached. Billups testified that he took those four or five copies and placed them on a table in the break area of the plant. Although some employees took their breaks in the cafeteria, and other areas of the plant, according to Billups, the Employer made no effort to place copies of its rebuttal in the cafeteria nor did it make any other attempts to distribute its rebuttal. However, the Employer's supervisor, George Bonnet saw copies of the Employer's rebuttal in the cafeteria and the two primary break areas all before the election. The Employer asserts that because the lunch hour had passed and there was only a single 10-minute break until the commencement of the election at 3 p.m. that day, it felt it was out of time to make an effective response.

The Board, with court approval, has long held that blatant appeals to racial prejudice invariably distract the voters from an objective and dispassionate consideration of the legitimate issues involved in a union organizational campaign and, therefore, have no place in the campaigns which precede Board-conducted elections. In the lead case, *Sewell Mfg. Co*., 138 NLRB 67 (1962), the Board set aside an election in which the employer had utilized a rank appeal to racial prejudice which had no connection with any conceivable legitimate workplace issue. Therein, the Board established a standard by which to determine whether campaign rhetoric containing racially oriented argument would warrant setting aside an election, as follows:

> So long as a party limits itself to truthfully setting forth another party's position on matters of racial interest and does not deliberately seek to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals, we shall not set aside an election on this ground. However, the burden will be on the party making use of a racial message to establish that it was truthful and germane and where there is doubt as to whether the total conduct of such party is within the described bounds, the doubt will be resolved against him. [Id. at 71–72.]

In subsequent cases, the Board and the courts have utilized the above standard to set aside elections which involved outright statements of racial or national origin hostility without any reference or nexus to legitimate employment concerns of the voters. See, e.g., *YKK (U.S.A.), Inc*., 269 NLRB 82 (1984); and *NLRB v. Silverman's Men's Wear*, 656 F.2d 53 (3d Cir. 1981). By way of contrast, the Board further defined the application of the *Sewell* test, indicating that certain types of racial or national origin rhetoric which has sufficient relevance to the legitimate campaign issues or employment concerns of the voters will not result in the setting aside of an election. Thus, in *Coca-Bottling Co*., 232 NLRB 717 (1977), the Board refused to set aside an election on the basis of a statement made by the employer's supervisor to a black employee, to the effect that if the union prevailed in the election, a certain employee would probably be made the shop steward and that such employee did not like blacks. In refusing to set aside the election based on such statement, the Board noted that the opinion expressed was made in a ''temperate'' fashion, did not rise to the level of ''irrelevant, inflammatory appeals to racial prejudice'' and was a statement susceptible to evaluation by the eligible voters. Similarly, in *State Bank of India v. NLRB*, 808 F.2d 562 (7th Cir. 1986), the court, enforcing the Board's bargaining order, agreed

with the Board that statements made by the union during the underlying election campaign, to the effect that the employer had been attempting to depress working conditions and wages for employees because of their Indian nationality or other minority status, was legitimate campaign propaganda that did not rise to the level of racially inflammatory rhetoric intended to produce or exploit strong racial prejudice or likely to produce such racial prejudice.

Moreover, the Board has found that where, as here, one party has raised a racial issue only in an attempt to denounce the alleged racism of the other, such factor tends to preclude a finding of a gratuitous appeal to racial prejudice found objectionable in *Sewell*. See *Beatrice Grocery Products*, 287 NLRB 302 (1987).

Based on the distinctions drawn by the Board in the various cases involving campaign rhetoric with racial, religious, or national origin appeals or overtones, I have concluded that the national origin or racial content of the Petitioner's campaign propaganda does not rise to the level of a sustained appeal to racial or national origin prejudice such as was condemned by the Board in *Sewell* or subsequent cases. In so finding, I first note that the material was truthfully presented. The Nakamura letter was reproduced in its entirety, including the name of the author. Although the Petitioner underscored several phrases, it did not change the content of the letter, but merely emphasized certain points the Petitioner apparently wished to draw to the readers' attention. The letter clearly and concisely indicated that it was a personal opinion of one Japanese businessman who, he claimed, shared a common opinion of American workers with other Japanese businessmen. The Petitioner left the employees to their own powers of analysis and reason to conclude whether their Employer would hold the same opinion, simply based on common national origin. Secondly, the article was, in fact, germane to the issues involved in the election campaign. Even before the campaign was initiated, the Employer's attitude toward its American employees was an ongoing and legitimate concern of several employees, as indicated by the testimony of Theodore Jackson Jr., and at the time the Petitioner distributed the Nakamura letter, the issue addressed therein had already become an apparent campaign issue as shown by other employee comments regarding who was really managing the company, the American managers or the Japanese managers, and whether the Japanese believed American workers were lazy and/or produced inferior products. However, as far as the record reflects, the Petitioner did not seek to exploit such employee concerns until the distribution of the Nakamura letter. In any event, the degree of the Petitioner's exploitation of the issue does not add or detract from its relevance to legitimate campaign issues. I find that it was germane to the campaign. Given the fact that the Employer was introducing Japanese management techniques into the American workplace and the obvious differences between the American and Japanese cultures, it would be unreasonable to conclude that Japanese attitudes toward American workers would not be pertinent to evaluation of an issue is the election or that such a concern would not be a legitimate employment concern for the voters. Third, the subject material did not rise to the level of a sustained appeal to racial hostility as was condemned in *Sewell*, supra; *YKK*, supra; and *Silverman*, supra. In those cases, the statements involved were presented by the parties involved in a manner that was obviously intended to be inflamatory. In the instant case, the subject document was a reproduction of a letter by a third party Japanese businessman, obviously expressing his own opinion and the Petitioner did not attempt to exploit that issue with any other material or argument intended to foment or inflame national origin or racial prejudice. Clearly, the Petitioner was not responsible for the content of the document, but was reporting opinion as it found it already in print. The Petitioner merely reproduced and caused to be distributed the opinion of one Japanese businessman and provided the voters an opportunity to determine its relevance and the weight to be accorded such third party comments. In fact, the record shows that employees debated the article and, in particular, questioned whether the published remarks contained in the Nakamura letter represented the attitude of their own Employer.

The Board stated in *Sewell*, supra:

> The ultimate consideration is whether the challenged propaganda has lowered the standards of campaigning to the point where it may be said that the uninhibited desires of the employees cannot be determined in an election. [Id. at 71.]

I find the material in the instant case was not so inflammatory or irrelevant as to destroy the potential for the voters to express their freedom of choice in the election. The article was merely one personal opinion provided as a topic for debate. The record reveals that employees did debate the matter in a relevant fashion, i.e., whether or not the document was representative of their Employer's attitude.

Having found that the Petitioner's distribution of the Nakamura letter did not represent a sustained or inflammatory appeal to racial prejudice and that the issues raised therein were germane to the election campaign, it appears that the only aspect of the Nakamura letter left to be addressed herein is whether or not it distorted the truth of the Employer's attitude towards its employees. Although I have concluded that the Petitioner's republication of the Nakamura letter was essentially a truthful presentation of previously printed material, for reasons set forth below, I find that even if there was some inherent misleading involved in such use of the document as impliedly representative of the Employer's thinking or attitude, such arguable misrepresentation would not warrant setting aside the election.

In *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), the Board promulgated the current standard for evaluation of the truthfulness of campaign propaganda. In essence, the Board stated that it would no longer probe the truth or falsity of the parties' campaign statements, would not set aside elections based on misleading campaign statements, and would only intervene in cases involving forged documents or other deceptions which prevented the voters from recognizing the propaganda for what it is. Id. at 133. The Board therein essentially held that employees are sufficiently sophisticated to recognize and evaluate campaign propaganda.

As indicated herein, the Nakamura letter was truthfully presented in its entirety without any accompanying misrepresentation. Moreover, the Employer, in my view, had an opportunity to effectively respond and rebut the content of the Nakamura letter before the time of the election but failed to

adequately avail itself of that the opportunity. Thus, 2-1/2 hours before the election, the Employer had in its possession a copy of a subsequent letter to the editor of the same publication in which another Japanese businessman had roundly admonished Nakamura for his comments about the American worker. The Employer also had prepared a cover memorandum explaining the rebuttal nature of the Tsakikoto letter and, more importantly, the Employer's position that the Tsakikoto letter more accurately represented the attitude of the Japanese people, which position was endorsed by the Employer's Japanese and American management team. The Employer's memorandum also states that the Employer's management firmly believed in the ability of its employees and their objectivity in analyzing the campaign propaganda presented to them. While the Employer's manager of human resources, Harry David Billups, testified that he had prepared only four or five copies of the Tsakikoto letter and the Employer's rebuttal cover letter and placed them all in one of two break areas, the Employer's supervisor, George Bonnet, testified that before the election, there were copies of the rebuttal document in the cafeteria and both break areas. While the Employer conceded that it had the facilities to produce copies of that document in sufficient numbers to provide one for each employee, no effort was made to give the rebuttal any wider distribution, either by posting or delivery to individual employees.

Based on the foregoing, I find that the Petitioner's distribution of the Nakamura letter did not involve any attempted fraud or deceit on the voters such as would have misled them from an informed and objective evaluation of the content of the document. Moreover, the Employer had, but failed to avail itself of, the opportunity to effectively rebut the Nakamura letter. Accordingly, I find that the Petitioner's campaign propaganda did not violate the standard enunciated by the Board in *Midland.*

With respect to the Employer's reliance upon the statements made by rank-and-file employees during the election campaign with respect to their concerns that they were not sufficiently respected or appreciated by the Employer's Japanese management, I find those statements were personal expressions of opinion and understood as such by their fellow employee. Thus, notwithstanding the speaker's prounion stance in the election campaign, the Petitioner was not answerable for such individual commentaries.

Although the Board has indicated that third party statements sufficient to establish a ''sutained inflammatory appeal or systematic attempt to inject religious issues into a campaign''[4] could be sufficient to set aside an electioin, it would not do so on the basis of isolated or casual remarks not attributable to the petitioning union. *Brightview Care Center*, 292 NLRB 352 (1989).

In the instant case, I find that the limited remarks of two or three employees during the course of the union campaign, some of which apparently predated the campaign, is insufficient, under the Board test for evaluation of such conduct, to set aside the election herein. Moreover, I have considered such conduct in conjunction with the Petitioner's distribution of the Nakamura letter, and have concluded that those statements and the latter event do not rise to the level of a sustained appeal to racial or national origin prejudice or hatred which would warrant setting aside the election. In sum, I have concluded that the totality of the evidence adduced in support of Petitioner's Objection 3 is insufficient under Board law to warrant setting aside the election herein.

[4] Presumedly, the Board would have the same approach to racial or national origin issues.